

HER GRACE
OF
MARLBOROUGH's
PARTY-GIBBERISH
EXPLAINED,
AND THE
True Sons of the CHURCH
VINDICATED.

By an HONOURABLE HAND.

DUBLIN:

Printed by S. POWELL,
For W. SMITH in *Dame-street*, and G. FAULKNER
in *Essex-street*, Booksellers.

MDCCXLII.

Recd

PARTY-GIBBERISH

EXPLAINED, &c.

IT could not indeed be reasonably expected, that a fine Lady who owns her *having never read, nor employed her time in any thing but playing at cards,* in the early part of her life, should throw away any of that precious time then or afterwards, in enquiring into the meaning of what she is pleased to honour with the title of *Party-Gibberish*: No, her Grace had surely been much better instructed by her *virtuous mother*. Nothing less than the widely extended *sphere of politicks, the examining titles to estates, bills in Chancery, and accounts,* could be objects worthy of her Grace's great and penetrating genius: such then must be the employment which may naturally be supposed (for the good of the Nation and that of *her Family*) to take place of *card-playing*, for the remaining part of her Grace's life, and consequently no time left for the insipid, dry, mortifying, *unprofitable amusement* of speculating upon the exploded doctrine of *non-resistance*, in her Grace's opinion, nothing more nor better than the mere *Party-Gibberish* of an inconsistent, abominable set of men, called *Tories* and *High-Church-men*.

GIBBERISH, we own, is a very unintelligible kind of language, the language only of *Rosicrucians* and *Gipsies*; but as this *Party-Tory-Gibberish* her Grace speaks of happens unluckily to be the *Gibberish* of our old musty law-books, both *common* and *statute*, not to mention another old dirty worm-eaten book, called the book of *HOMILIES* (and as such consequently deserving some degree of attention) we thought therefore we could not do greater honour to her Grace's late

ingenious Account of her own Conduct, with which she has entertained the World, than by giving her readers an explanation of the *Party-Gibberish* of *non-resistance* mentioned in her Grace's book; and this we shall be happily enabled to do from one of the *ablest* as well as *honestest* lawyers of his time, namely, the honourable ROGER NORTH, Esq; younger brother of the great and truly worthy Lord-keeper NORTH, who in his EXAMEN OF ENQUIRY into the third volume of Dr. *White Kennet's* complete history, in vindicating the *Tory-Clergy* from the vile aspersions and malicious insinuations of the author of the *Complete History*, proceeds thus.

—Pag. 326.— ‘ But now for a touch of malice upon this occasion; observe the author published this book after King James left England, and King William was possessed of the throne, when he could not but know how these *other*, that is the *Tory*, clergy, (in the former reign) after Popery came forward in earnest, left the cause of fanaticism and most efficaciously declaimed and wrote against Popery, which was then become the dangerous case. What reason therefore has the author to revile them for doing the like against non-conformity, at a time when there was most need? Or where has he done them right for the great good they did, and the evils the best preferred of them suffered, in that time, with an uncommon zeal, publick spirit, and constancy? While the fanaticks and their conforming friends preached and addressed at another rate. But to say truth, there was no time when they let drop wholly the cause of Popery; but they never kept the people under a guard and awake, as far as was reasonable, with respect to the popish adversaries, whenever occasion was given. Ay, says the author (*in effect*) *but then they should have let fanaticks and rebellious dissenters alone.*

‘ To

' To conclude therefore with a clear explication
 ' of *running down*, an ambigue term of the author's,
 ' it is to be noted in short, that after the dissolution
 ' of the *Oxford* and *Westminster* parliaments, the
 ' whole nation came into the interests of the crown,
 ' and signified as much by almost universal accla-
 ' mations and addresses ; all expressing the utmost
 ' detestation and abhorrence of the *Whig* principles :
 ' which made the whole party shoot the pit and
 ' retire, as not daring to be pointed at with ill-fa-
 ' voured reflections. And this is the *running down*
 ' the author charges upon the *other*, or loyal con-
 ' formable clergy, as moving only from their petu-
 ' lance. So kind is he to them, whose behaviour
 ' and conduct had been applauded, and their per-
 ' sons revered by the whole nation.'

' But he says farther that, *these other divines*
 ' *pretended to be more afraid of a republick than of*
 ' *a popish successor*. We are among the indefinites
 ' still. By these *other* I hope he doth not mean the
 ' good Archbishop of *Canterbury*, and those other
 ' Bishops, who were confessors, and went to the
 ' *Tower* and trial, at the peril of all the good they
 ' could in all their lives expect and enjoy in the
 ' reign of King James II. but he is undetermined,
 ' and brings all into the scrape together. He con-
 ' tinues his good character of these *others*, and
 ' makes them arrant hypocrites and knaves that *pre-*
 ' *tended*, &c. which I understand to mean counter-
 ' feited, and knowing better, acted against their
 ' consciences. It had been more civil to have given
 ' them up, as at first, for a parcel of irreclaimable
 ' wretches, blockheads, and sots that knew no bet-
 ' ter. But let us see now what the case might have
 ' been if these *others* had wanted, as the author has
 ' declared, common sense. Then it is possible they
 ' might think rebellion, and what it drives at,
 ' change of government, to be a *Pandora's box*,
 ' fraught

' fraught with all sorts of evils to a nation, worse
 ' than plague, pestilence, and famine. And per-
 ' haps their small skill in history might lead them
 ' into such a way of thinking.'

' But, passing by this politic gear, the author
 ' may put the matter upon a wrong point, and
 ' that is fear ; as supposing they took measures, like
 ' himself, from temporal good and evil, and
 ' weighed only that which was like to do them most
 ' good or hurt. He may think them interested,
 ' but mistaken ! while perhaps those silly *other* di-
 ' vines, in truth, might have squeamish consciences,
 ' and for want of the author's better learning and
 ' instruction have notions of divine right, that is of
 ' things which no human power ought to deprive
 ' or alter, as the doctrines of the Gospel, whereof
 ' they might say *non-resistance* is one. And it seems,
 ' by their doctrines and behaviour, that they did
 ' not (as the author flurs it) *pretend*, but were *really*
 ' of opinion, that duty and allegiance to governors
 ' did not depend on any religion, christian, or hea-
 ' then, and that they ought to obey idolatrous or
 ' heathen princes in all lawful commands ; and,
 ' if for conscience they could not obey, they chose
 ' rather to suffer than, with force and arms to
 ' resist. And this, with such skill as they had,
 ' (if the author will be pleased) they pretended to
 ' prove : and really, if one may guess by their
 ' sermons and discourses in print, which the au-
 ' thor, or any of *his clergy*, have not as yet con-
 ' futed ; they have, as it were, done it. And,
 ' as they pretend, not only by sacred authority,
 ' and the examples of the best Christians, but by
 ' their own also, shewing their faith by their
 ' works, directly contrary to the author's libel,
 ' that sets them forth for pretenders only. And
 ' for all the matters here touched, whoever will
 ' be better informed, may consult the many learned
 ' books

books wrote and published on these subjects. But thus much I thought fit to represent in opposition to the defamatory spirit of this foul writer, that hath had face enough to charge hypocrisy upon such an incomparable college of divines, as then had stations of authority in the church, at whom he spits, in the most injurious manner, through the comprehensive account of his *other* clergymen.

But he will come closer yet ; he opens his budget by degrees. He says that these *other clergy run into such high notions of passive-obedience and unbounded prerogative*. ——— Who can guess the sense of this rabble expression, *high notions* ? Why could not he say what notions ? Words, that signify nothing, by dint of corrupt prejudice in men's minds, are made to signify any thing, and they shall not feel themselves, though, in that manner, they are drawn in to credit contraries : and that is the drift of this no-sense, or rather nonsense. But observe the serpentine subtilty of this sentence. He plants his *passive-obedience* and *unbounded prerogative* close together, as meaning the same thing, and both relating to arbitrary power ; so that whoever takes the one has the other of course : but for to say any of them was for *passive-obedience* and against *unbounded prerogative*, or who run not into the letting it up, will be reckoned, according to this text, arrant nonsense. So the author affirms these *other* clergy were a pack of traitors of the law and rights of the people, and setters up of *unbounded prerogative*. If the words can bear a lower sense, I knock under ; but as they stand, and are obviously to be understood, we have exposed before us a most egregious fallacy. It being notorious that no persons less yielded to undue *prerogatives* than the men of *passive-obedience* did ; and the very terms, as well as the intention of
 that

' that doctrine, carry it so : for complying, is set-
 ' ting up of prerogative, and suffering is denying
 ' of it ; and more effectual, than rising up in arms
 ' to resist it. Now take the whole character of
 ' this venerable body of the clergy of *England* in
 ' general, described in his *other* clergy. They had
 ' no concern against popery, were loose in their
 ' principles touching the rights of the church and
 ' state : persons debauched and illiterate ; valued
 ' themselves on a factious distinction ; were drawn
 ' in to any thing ; *run down* their betters with noise ;
 ' pretended one thing and thought another ; and,
 ' finally, by certain tricks, called *high notions*,
 ' set up *unbounded prerogative*, that is, arbitrary
 ' power in the nation. If this be not a sufficient
 ' eulogy, let the author think again, and mend it if
 ' he can.'

' Having now brought our *other* clergy to the
 ' bar for *passive-obedience* and *non-resistance*, which
 ' are principles that allow no sort of rebellion, or
 ' resistance of government, with force, to be law-
 ' ful : These scurvy tenets must be battered to
 ' pieces ; else, what will become of us about the
 ' *Rye* business ? Towards the beginning of this
 ' * reign, the author is guilty of a pleasant nicety.
 ' He quarrels with the *non-resistance test*, called the
 ' *corporation-act*, which some, as he says, took with
 ' a distinction ; and, if we believe his margin, it
 ' was a very odd one, *viz.* to the word *endeavour*
 ' mentally to add *lawful*, which, as they understood,
 ' referred to parliamentary acts, whereby the go-
 ' vernment might be *lawfully* changed, and so sal-
 ' ved their oath. But this author would mend
 ' their reserve ; for, to the words *taking arms*
 ' *against the King or persons* (legally, adds he) *com-*
 ' *missioned*. And again, *In (legal, says he) pursu-*
 ' *ance*

* *ance of such commission.* The impertinence of all
 * this shews the author's penchant towards disguises,
 * and masquerading seditious practices that tend to
 * open rebellion. For every commission is, *eo no-*
 * *mine, legal* ; else it is nullity : so for the authori-
 * ty, it justifies no acts, not legal. But he would
 * be understood thus ; being *legal*, may not be re-
 * sisted, *ergo*, illegal may : which is false Logick ;
 * but so long as he puts it in the mouths of a rab-
 * ble to say *legal* or *illegal*, either is at hand to serve
 * the turn ; true or false, it is enough to say it.
 * But he might have spared his remark, for that
 * act of parliament made no new law, but declared
 * the old, requiring only a recognition of the law
 * as it then stood. And the Author may wonder
 * when I tell him, that taking up arms upon any
 * account whatever, with or without his odd di-
 * stinction, is utterly against law ; and (excepting
 * the cases only of invasions, or great depredations,
 * when every private man is a Constable for repelling
 * such enemies, and acts by a presumed authority of
 * the government) the rule before laid down, was, in
 * all that reign, deemed to be universally the law
 * of *England*. But because the author builds so
 * much of his rebellious apologeticks upon the con-
 * trary tenets, that force, even against the govern-
 * ment, or any part of it, may be lawful, and
 * the subject matter hath entertained the most able
 * and learned pens of this latter age, and not at all
 * upon the same topicks of reasoning ; I think it
 * will be justice to the controversy, to shew the sum
 * of what those persons alledge for *non-resistance*, that
 * argue properly upon the most suitable heads ;
 * which seem to be those of the people's allegi-
 * ance, pursuant to the positive law of the land,
 * and the rights of the monarchy of *England*, as
 * they are by law expressly and indubitably esta-
 * blish'd.

' If it be a truth that laws (however originated)
 ' bind a people, then the people of *England* are
 ' bound not to resist (with force) the King, or
 ' those commissioned by him, in any case, or up-
 ' on any pretence whatsoever. This is what they
 ' alledge, by way of *Thema*, that argue from po-
 ' sitive law ; and thence (say they) it flows, and
 ' is a known maxim of *English* law, that the per-
 ' son of the sovereign is dispunishable and incoer-
 ' cible by force ; and, in the practicable forms of
 ' proceeding, transgressions against this law are
 ' judged upon accusations after the form of high
 ' treason. This consequence of law the maintain-
 ' ers of resistance scarce deny ; for they seem to
 ' go off from, and surmount positive law, suppo-
 ' sing a power, they call the people, superior to
 ' all law, having it in their hands to reduce laws,
 ' and law-makers all together ; and so they think,
 ' they argue upon sure grounds. But, say the o-
 ' thers, this eludes the hypothesis, which is, that,
 ' the people are subject, and bound by the laws :
 ' for it is the same as to say there is no law but,
 ' in active force, which force is not constant ; for,
 ' sometimes one, then another division or faction,
 ' of the people proves to be strongest. And then,
 ' the laws, if such may be, are ambulatory, and
 ' that, which men call right and wrong, is contin-
 ' gent, as a weather-cock that varies with the air :
 ' all which is ridiculous to affirm in Discourse.
 ' But, in a nation that hath established laws, all
 ' questions of right and wrong are delated to execu-
 ' tive power, in such methods of determination as
 ' the laws have prescribed ; that is, by regular pro-
 ' cess before competent judges, against whom there
 ' is no just exception.'

' Then, say they, nothing can justify resistance,
 ' but what will amount to a just and legal defence
 ' upon an indictment of *high treason*. If so, ex-
 ' mine

mine all the ordinary pretensions for resistance, as
 first, the abuse of royal power. That will not do,
 for it is a rule of law, that *the King can do no*
wrong, because all acts of government against law,
 are nullities; and such have no legal effect, and
 justify no commissioner or agent whatsoever. Then,
 next, immediate violence from the person of the
 King upon a Subject, will also fail; for *se defen-*
dendo is no legal plea in case of an inferior officer,
 much less in treason; for the law against compal-
 sing the death of the King, hath no exception.
 Then, as to personal defects or incapacities, be it
 in the highest degree, as madness, lunacy, infancy, or
 negligence, they afford no matter of defence in
 treason; for whatever the resisters say, the LAW
 says there can be no such thing: for, if human
 infirmity may in such cases be alledged, ill peo-
 ple will ever pretend it, to serve the turn of their
 ambition. In a word, the law owns no mischief
 to a people in general, or particular, so conside-
 rable as to be put in the scales against *high trea-*
son. Littleton's rule, *better a mischief than an incon-*
venience, sounds oddly, but hath this very mean-
 ing, and is very good law; and the reason is,
 there can be no law but contingent mischiefs to
 particulars may, and do often happen; but the
 consideration of them doth not disable a law that
 hath a general view: and who ever argues against
 a law, from a supposition of such mischiefs possi-
 ble, argues against all law, and for anarchy and
 confusion. And the law hath another rule, which
 respects the same case; which is, *de minimis non*
curat lex: and no contingent mischiefs, to par-
 ticular persons, are regarded against the gene-
 ral convenience of a law, especially when go-
 vernment, common peace, and protection depends
 upon it.

' These maxims of law, say these *non-resisters*, are
 ' sufficient to answer all the popular reasonings of
 ' men of former and latter times, built upon the
 ' possibility of particular mischiefs. But they say
 ' farther, all reasoning is out of doors where there
 ' is positive law. Themselves will not deny the sta-
 ' tute of treasons to be law, and in full force. And
 ' then there is a new foot, upon which the case
 ' stands; so that if there were ever any former
 ' maxims, modifications, practices, or settlements
 ' of power contrary to that, call them covenants,
 ' contracts, fundamental principles, or whatever you
 ' please, they all sink into and are drowned in that,
 ' as latter laws (inconsistent) always repeal former.
 ' And it is well it is so; for there are evidences in
 ' history that, before the making of that law, which
 ' the lawyers say is but declaratory of what the law
 ' was in truth before, there were great stretches;
 ' and even *læsa majestas* was construed treason: but
 ' they make farther use of this statute, which was a
 ' vast ease and safety to the people, by some farther
 ' reflections afterwards. In the mean time, they
 ' say their adversaries may not fairly alledge for an-
 ' swer, that it is not ingenuous to refer to actual pro-
 ' cess, or course of law, and the consequences of that,
 ' because all governments will take care of themselves,
 ' and that the laws shall be declared entirely on their
 ' side; as if this insisting on positive law, were a sub-
 ' terfuge, rather than an argument. But those gentle-
 ' men do not allow such answer to be just, or any co-
 ' lour; for will not all irregular persons, as well as trai-
 ' tors, viz. felons, and wrong-doers, if they may come
 ' off so, or if they are too strong for the judge, an-
 ' swer the same thing? Why the one more than the
 ' other? To object power against the force of posi-
 ' tive law, is ridiculous; for without a title to ab-
 ' solute power, there can be no law at all. For
 ' temper therefore in *England*, it is provided by law,
 ' that there be proper Judges, competent to de-
 ' cide

• cide all questions of right and wrong, whether
 • it concerns powers or interests, and such as are
 • put under all Obligations of duty and oaths to do
 • right according to law. But yet, say these *non-*
 • *resisters*, to enforce their reasoning, and bring it to
 • the height of demonstration on their side, they will
 • suspend the judges immediate authority, though
 • that be decisive, and state the case upon universal
 • principles, and reasons at large; and then

• They take notice of some terms commonly used
 • in this dispute; and first, that *non-resistance* and
 • *passive-obedience* are synonymous, and mean one and
 • the same thing, that is a negation of all active
 • force, whatever the consequence is. *Obedience*,
 • in common acceptation of the word, sounds *active*,
 • and therefore doth not well bear such an adjective
 • as *passive*; *non-resistance* is properly *passive*: but
 • common use hath confounded the language, and
 • divers words or phrases brought to signify one and
 • the same thing; which is only a chusing to suffer,
 • rather than obey unlawful commands. And it is
 • very injurious to infer from such a behaviour, that
 • any power or prerogative, more than is lawful, is
 • thereby recognised; but it is one way, and an ef-
 • fectual one, of flying in the face, as they say, of
 • an exorbitant power, and a flat contradiction to
 • it. Thence it is inferred, that in all civil concerns,
 • the law is the rule of obedience, whether *active*
 • or (as it is termed) *passive*; only the former belongs
 • to *lawful*, and the latter to *unlawful* commands.
 • And there can be no better means of asserting the
 • rights of the people by law, than the disowning
 • unlawful commands by patient suffering. For
 • which reason the *passive-obedience men* are the most
 • expresse defenders of the laws against unbounded
 • prerogative; as was demonstrated by the heroic
 • carriage, towards the government, of some of
 • the enthronised Clergy (*others* as they were) in a
 • former reign.

• Then

Then they observe, that instead of the old way of expression, the laws of this kingdom, or nation, his Majesty's laws, the laws of the land, or the common law, some affect to use the word *constitution*; which in itself is no ill word, and means no other than as before. But it is commonly brought forward with a republican face, as if it meant somewhat excluding, or opposite to the monarchy, and carried an insinuation as of a co-ordination, or co-ercion of the monarchy: which latter term, *viz.* the monarchy of *England*, as of old, so still, implies the *whole law*; as the crown, in all the authentic books, is maintained to be *fons justitiæ*: and it is no where to be found, that the crown was one thing, and the constitution another; but the true constitution of *England*, is the monarchy as established by law. And so acts of parliament always refer (and anciently more express than now) to the grant and ordination of the crown, with the usual additions respecting the two houses. It is dangerous to vary the language of the law; because those who do not well distinguish, are carried into mistaken notions of the publick thereby:

Then they say, as to precedents, that they are not to be received as a rule of legal authority, but when done in quiet and regular times, approved and allowed by a constant usage in succeeding times: for escapes are no precedents. There have been some of this sort, as the late **parricide** of King CHARLES I. by *Cromwell*, who (to go no higher) died in his bed. Which action, since the *happy RESTORATION*, hath not been allowed a warrantable precedent; but yet wicked men, if permitted to have power, would alledge and use it as such. Undue precedents are very dangerous to liberty; for there are more and stronger instances of exorbitant prerogatives, than of republican encroachments;

croachments; and the argument is as good for the
 one as the other. Therefore actions, out of
 Course, irregular, and *time-serving*, should not be
 received, as precedents decisive, in justification of
 powers. These prejudices removed, they state the
 case of obedience upon the true frame and econo-
 my of right in the world, and particularly upon
 the general common law of *England*.

They seem not to dispute, as some self-contra-
 dictors have done, but take for granted that, in
 all governments that ever were or can be, the *su-
 preme power*, wherever it is lodged, is and must be
 uncontrollable and irresistible: That being a truth
 included in the notion of authority or power, so
 as the one granted, the other follows; as two
 and two are equal with four, because in the idea
 they are one and the same. Government resista-
 ble is no government; and those, who say the
 contrary, are to be talked with no more than scap-
 ticks in philosophy, who pretend to doubt every
 thing, even of their own essence, which that very
 doubting demonstrates. So they take it as deter-
 mined, *viz.* that, in any settled state, the *supremo
 power*, whether it resides in one, a few, or many
 may not be lawfully resisted, in any case whatso-
 ever, by any coercive force.

In the next place, they say that, in *England*,
 the supreme authority is by law lodged in the
 crown, together with the two houses of par-
 liament, when duly assembled. It is not at all
 material whether, or how it might have been
 otherwise placed; though it is naturally impossi-
 ble that, in *England*, it can reside in all the
 people (as hath been vainly pretended to by some
 democratic cities of old) the people of *England*
 being separated too far asunder, ever to be imme-
 diately joined in one action. It is enough here
 that, by indubitable law and right, the crown,
 with

' with the states of parliament, are to all intents the
 ' supreme authority, being what is termed the *Le-*
 ' *gislative Power*, which no subject ought to gainsay
 ' or resist. This they think will be granted; for
 ' whoever pretended to gainsay or resist an act of
 ' parliament, although, by natural possibility, it
 ' may be as inequitable as any action of a single
 ' person can be? My lord *Cook* will have it, that
 ' acts of parliament, against common justice, are
 ' void; as if one were passed for erecting a judica-
 ' ture to determine *parte inaudita alterâ* [*without*
 ' *bearing both sides.*] But this must be understood in
 ' conscience and natural reason only, and not by the
 ' sentence of courts of law; else, the acts to vest
 ' and devest private estates, and attainders of ab-
 ' sentees, and diverse others would run a shrewd
 ' risque in *Westminster-Hall*.

' It falls out in the actual administration of go-
 ' vernment, that by reason the persons, invested with
 ' power, cannot act all things directly, the busi-
 ' ness is distributed in diverse manners, according
 ' to the policy of several estates, to answer the ends
 ' of government: as for the making, judging and
 ' executing laws for punishing, defending, com-
 ' pelling, resisting, and the like. And these sub-
 ' divided offices, or branches of power, may be
 ' committed to single persons or junctos, as laws
 ' have provided; and then all those persons or
 ' authorities become parts of the supreme power in
 ' their respective provinces. And (without regard
 ' to wrong or right) as the whole supreme power
 ' is, so are they, in their proper jurisdictions, ir-
 ' resistable by law upon any pretence whatsoever;
 ' not allowing any man even liberty of self-preserva-
 ' tion. For whoever thought it lawful for one ac-
 ' cused, or condemned capitally, knowing himself
 ' to be innocent, and grossly abused in the judgment,
 ' to kill the judge or jury, or hang up the hang-
 ' man

' man, to save his own neck ? A man kills the
 ' bailiff that attacks him with force to take him ;
 ' it is an offence capital, and he cannot plead *se*
 ' *defendendo* ; and the law requires no proof of
 ' malice. These considerations reflect violently up-
 ' wards, upon the supreme power itself ; for if the
 ' derivatives in their offices may not be resisted on
 ' any pretence, how comes the principal, or supreme
 ' in the execution of the whole power, to be resist-
 ' able by force ?

' But say these gentlemen farther, that, in *En-*
 ' *gland* (whatever may be elsewhere) the grand
 ' distinction of the supreme power is into the le-
 ' gislative and the executive ; which latter com-
 ' priseth all actual coercion and force entirely in
 ' itself. As to the former, as the law now stands
 ' for the opinions and modes of speaking, which
 ' took place in ancient times, are dropt) it is most
 ' certain that, in real effect, the two houses of
 ' parliament have a co-authority with the crown,
 ' in making laws ; or it may be more agreeable,
 ' in other words, to say a negative voice upon all
 ' legislative acts ; or a little more, that is, a sort
 ' of rogation, or power to move for, and give a
 ' spring to, new laws, by petition, or otherwise, as
 ' the practice is. So as, in the main, no new law,
 ' of any sort, can be made or discharged for taxing,
 ' or otherwise, without the formal and actual con-
 ' currence of both houses of parliament ; and either
 ' dissenting, or non-consenting, no new law is or
 ' can be made. And this union of powers, in the
 ' making of laws, is that which, in *England*, is
 ' properly the supreme power absolutely and to all
 ' intents. The next thing is to consider how it is
 ' distributed, that is, between the crown and the
 ' two houses ; for there is no power or authority
 ' which is not derived from, or under, them or one
 ' of them.

' And first say they, it is not found that the
 ' two houses, beyond this concurrent power in
 ' legislature, claim any proper agency in the go-
 ' vernment whatsoever. As for judicature in the
 ' lords house, it depends on the executive power
 ' of the crown, as other courts of justice do. Even
 ' private persons have often the like propriety in
 ' jurisdiction; and it is the King's justice, though
 ' administred by the lords: for the writs of error,
 ' that are the foundation of the legal jurisdiction,
 ' are returnable, *coram rege in parlamento*. And,
 ' as to them and the commons, the office of coun-
 ' selling, petitioning, representing, &c. in virtue
 ' of the very words, excludes acting: and it is
 ' what every private person may, and often hath
 ' a right to do. But the houses, either severally
 ' or jointly, have this capacity in the highest de-
 ' gree, being the greatest council and most uni-
 ' versal representative that can be called or assem-
 ' bled, legally in *England*. But yet, saving the
 ' share in the legislative and judicative, no act of
 ' the houses, or of either of them, are coercive, or
 ' will impeach any man at common law for dis-
 ' obedience; and as for matters of privilege, grown
 ' into course, the coercion is still (formally) granted
 ' by the crown, and an officer of the crown, the
 ' Serjeant of the Mace, assigned to execute the
 ' house's orders in matters of privilege. Else,
 ' the Commons claim no judicature, nor so much
 ' as power to administer an oath; and in matters
 ' of accusation, are petitioners to inform, as the
 ' sense of the word *impetio* is, not unlike a
 ' grand Inquest of the whole nation. All which
 ' matters are touched, lest any of these particulars,
 ' omitted, might be mistaken for an authoritative
 ' share in the executive government of *England*.

' Then farther, say they, it appears that all the
 ' supreme power of the government of *England*,
 ' saving,

' saving only that which is lodged in the two houses
 ' of parliament, is to be found in the crown. The
 ' general inference from thence is gross and obvi-
 ' ous, but they pursue it by steps. They say there
 ' are two conditions of the *English* government, the
 ' one sitting, and the other in vacancy of par-
 ' liament. The sitting, as to time, place, and con-
 ' tinuance (saving the effect of the *triennial act*) is
 ' known to be in the pure direction of the crown ;
 ' yet, considering that, out of parliament, there
 ' may want means to petition or advise, *de arduis*
 ' *regni*, it is an act of conscientious trust and justice
 ' in the crown to the people in general (the said
 ' law, apart) to hold frequent parliaments, and
 ' much more so according to that law, which turns
 ' it to a specifick right, that the intent of it should
 ' be pursued. But in all points whatsoever, saving
 ' what has been alledged, the government of *Eng-*
 ' *land*, in and out of parliament, is exactly the
 ' same ; and none can say that, sitting the parliament,
 ' the crown hath less power of government than in
 ' vacation, nor, in the latter, more than when
 ' sitting.'

' To obviate an objection, that, in vacancy of
 ' parliaments, there is no supreme power *in esse*,
 ' because no new laws can be made, without
 ' which capacity the supreme power is imperfect,
 ' and, in the fulness of that authority, ceaseth ;
 ' they say that a power of positive legislature is
 ' not incident to a supreme power, but it is often
 ' perfect without any legislative power at all. As
 ' in *Turkey*, according to the maxims of policy
 ' there, no power upon earth can alter their laws ;
 ' for they (the laws) result from the religion of the
 ' country ; as here no power can alter the doc-
 ' trines of the Gospel. And, with them, the
 ' question is never what should be, but what is
 ' the law ; and yet there is a supreme power in

the person of the Emperor, as must be confessed.
 And the strains and abuses of ministers there to
 serve the turns of power, and the pleasure of
 great men, against justice and their laws, is no
 answer to the constitution which, *in itself*, is un-
 alterable, and yet there is a supreme power.
 But to be more plain. If there were no laws at
 all in a country, but the will and pleasure of a
 potentate, or some juncto, were really and truly
 the law; that binds every subject in conscience
 to obedience. Yet even that supreme power is
 subject to rules, or law; for there is not, nor
 can there be, any power upon the face of the
 earth, above, or without law. For where none
 are declared, and there is no superior to exact
 accounts, yet the law of natural justice and equity
 prevail. And so a despotick ruler is tied up as
 much to the law, in duty and conscience, as any
 sub-governor is, who, by his commission, is
 restricted to rules. But this duty of all govern-
 ments doth not impeach the notion of supreme,
 whether it be declared or rests in the mind by
 nature. Either is without coercion, and equally
 obligatory. If coercion be supposed, then the
 power that coerceth, takes the place of supreme:
 and it is a *Pelion* upon *Ossa* to set power over power;
 for that which hath the coercion of others, must
 be incoercible itself. And that supposed, and no
 obligation, but conscience and duty in the supreme
 power, where is the difference, whether it be
 guided by positive and declared law, or by natural
 justice? All that can be said, is that laws assist the
 weak capacities of some men in power, by telling
 them what ought, and what ought not, to be
 done, which their own natural skill might not per-
 haps have found out. Though I may say there is
 scarce a sincere person in the world, whom the
golden rule, DO AS YOU WOULD BE DONE BY,
 will

will not direct: so it is corrupt will, and not want
 of understanding, that often misleads men; and
 that takes place against positive law as well as
 against natural justice. So it returns every way
 upon the conscience of powers; for if we admit
 a superior coercion, or in the commoner phrase,
 a liberty (with power) to resist, even that may be
 exercised with as bad a conscience as the other;
 and then what is got by the bargain?"

But they say also, that it is a most pernicious
 error to discharge the supreme power of the ob-
 ligation to justice for conscience sake, as they
 do who say acts of the supreme power, or (in
 the forinsecal stile) legislative acts, or acts of
 parliament, are always just, and, though made
 in partial cases, are not injurious because absolute:
 for a legislative or supreme power, where-ever it
 resides, is as much bound to common justice and
 equity, in every publick act, as a private man
 is obliged to common trust and honesty. And
 he that says such powers do no injury, though
 their act is (as in possibility may be) most unjust
 and facinorous, because they cannot be contradic-
 ted, must, at the same time, allow that a private
 man, that breaks a secret trust, or kills his father,
 there being no evidence to check or convict him,
 is a very honest man, and hath done no wrong.
 Wherefore, if the consciences of men were not
 some security in the general, among promiscuous
 societies, and in the ordinary dealings of the
 world; the cases of innocent men, that are most
 apt to rely on it, were very hard. But I dare say
 that, however open differences make a noise, there
 is in the world, as bad as it is, more justice among
 men, upon account of the common obligation of
 equity and conscience, than from all the process
 of law and the coercion of the magistrate all the
 world over. And these men, who argue so strongly
 against

' against all trust, especially that lodged in gover-
 ' nors, which is and will be a pure trust as long as
 ' the world stands, do but shew how little of that
 ' principle is to be found in themselves, which they
 ' think wholly wanting in others. It is most certain
 ' that *numbers of men*, whenever a publick trust is
 ' reposed in them, may (I wish I could not as truly
 ' say sometimes do) *break all the commandments of*
 ' *God*, as well of the First as Second Table, as any
 ' private persons they are chose to be a guard against.
 ' And to conclude, the having power is so far from
 ' an excuse for doing ill things, that it aggravates
 ' them ; as when dogs, that are to keep, worry the
 ' sheep. A common thief has more to say for him-
 ' self, than an oppressor or murderer, by power,
 ' who cannot be coerced. All these matters laid to-
 ' gether, make it plain that, whether there be a
 ' legislative power *in Esse* or not, there is always a
 ' supreme power which commands all the forces of
 ' the state, and is by law, as well in the absence as
 ' in the presence of the legislative, irresistible with
 ' force, and that will fall out to be the case of the
 ' crown of *England*.'

' They farther alledge, that the premisses will
 ' most clearly appear, if we consider that the legi-
 ' slature, whereof the two houses partake, is of such a
 ' nature that resistance, with force, doth not take
 ' place against it. For laws themselves are but the voice
 ' or words of power, and have authority to create
 ' a duty, but no active force to compel obedience,
 ' or to which resistance can be applied ; for who can
 ' offer to resist a mere sound ? When the executive
 ' power comes forward with a strong hand, then
 ' there is somewhat to resist, but not else. There-
 ' fore resistance or obedience, active or passive, relate
 ' wholly to executive power, without which the le-
 ' gislative is enervous and ineffectual. Now all the
 ' rest of the supreme power of the government of
 ' *England*

' *England* (except only legislature, or the *non-resistable*
 ' part, wherein only the two houses are sharers) be-
 ' ing owned to reside in the crown, it follows that
 ' the same necessity, as makes any power irresistible,
 ' makes the crown of *England* irresistible, with
 ' force, upon any pretence whatsoever; which con-
 ' sequence is so plain as need not be enforced by
 ' varying the expressions or repetitions. And then
 ' upon the same account, it follows that, as con-
 ' cerning the *passive-obedience* and *non-resistance* of
 ' the subject, with active force (legislature always
 ' excepted, as not concerned in the question) the
 ' monarchy of *England* is the supreme power, and
 ' ought not to be opposed with force against its
 ' force in any case, nor upon any pretence; such
 ' opposition being a crime the laws stile *treason* or
 ' *rebellion*, for which the same laws allow no man-
 ' ner of justification.'

' And these gentlemen pretend to answer those
 ' nice arguers for resistance, that perpetually harp
 ' upon the abuse of power and the sad effects of
 ' it, which they would prevent or cure by resis-
 ' tance. They say that the matter of right and
 ' wrong is indeed founded in nature, and, in that
 ' quality, a law itself, however regularly enacted,
 ' may be (as I hinted before) abominable and wicked:
 ' that is, the very legislative power, were it (as it
 ' is not possible) the majority of the people, but,
 ' as ordinarily it is, in select hands, may tyrannize,
 ' and offend against all the rules of natural justice,
 ' common sense and equity; for which that power
 ' is to answer, as having transgressed and broke their
 ' trust, but to GOD ONLY; else the correctors of
 ' them become at that instant the legislative power;
 ' and then we are where we were before. Now
 ' there falls out a distinction here, which is between
 ' *misfortune* and *injury*. For if a subject is a sufferer
 ' under a general, however wicked, law, he is un-
 ' fortunate,

* fortunate, but not injured ; because he can claim
 * no more than the common benefit of the laws of
 * his country. And having, in due form, stood the
 * judgment of the law, he can ask no more ; his ap-
 * peal must be above ; there is no power on earth
 * to relieve him. This was the case of *Socrates*, and
 * we have his example, as well as reasonings, in
 * the report of his case, to confirm what is here main-
 * tained. In short, it is absolutely impossible to or-
 * der affairs so, but whoever hath power to do right,
 * hath, of consequence, power to do wrong ; and if
 * resistance be introduced upon a supposal (which
 * may be made no less arbitrarily and insincerely
 * than any act of power can be, and commonly
 * is so) of the undue and insincere use of regular
 * powers, they declare plainly, that there can be
 * no government nor distributive justice at all in the
 * world.'

* And these gentlemen, to fulfil their argument,
 * bring forward the positive Law, or Statute (which
 * was touched before, but it was not, as to one ar-
 * ticle, specified) which is absolutely decisive of
 * the question in the very terms ; and now that
 * comes forward, which is in the article in the
 * Statute, 25 *Edw. III.* that makes it *High Treason*
 * to levy war. This is an expression so general, as
 * forbids resistance upon any pretence ; for the go-
 * vernment is armed, and, if at all, must be oppo-
 * sed by arms, that is, in array of war, or (as they
 * say) *more guerrino*. And that whatever the cause
 * is, not directed, perhaps, against the King, but
 * to pull down bad houses, destroy engine-looms,
 * and the like popular and (as they think) meritori-
 * ous purposes, is solemnly adjudged to be treason,
 * as levying war within this article. So, say they, re-
 * sistance with force, which must be by levying war
 * is prohibited on pain of death by a positive law ;
 * which puts the matter past all argumentation.'

The

' The same gentlemen desire to be understood as
 ' to one objection, which is that this *passive obedience*
 ' or *non-resistance* of theirs is a slavish and dangerous
 ' principle. They answer NO : it is a principle of
 ' liberty and security. For can any man be free, and
 ' safe from the outrages of oppressive potent neigh-
 ' bours, who doth not live under a power sufficient
 ' to keep the peace and protect him? The sovereign
 ' power is high and remote, and commonly, the
 ' interest of it is to be a friend to the *Community*.
 ' If the abuses, when any are, fall hard upon the
 ' Grandees that are near it, they are compensated
 ' in the share that devolves among them ; with
 ' which they would be more ready to oppress their
 ' inferiors, if somebody were not above them to
 ' give protection and redress. And if the lusts and
 ' disorders, sometimes incident to power, bring
 ' evil upon the people, it is scarce ever so great,
 ' but, by the ordinary peace and protection the peo-
 ' ple enjoy, they are amply compensated. There is
 ' much more danger to a common man, of oppres-
 ' sion from bad neighbours, private enemies, and
 ' wrong doers, as also from the cabal at the next
 ' door, than from the potency of the government,
 ' though it should happen to be none of the best.
 ' And it is found that the worst governments are
 ' those that have most heads and hands ; for the
 ' abuses of such are more diffused, and turn to a mere
 ' general oppression.'

' They observe that men argue much by way of
 ' interrogatory ; as for instance. Can it be imagi-
 ' ned a nation ever submitted to be tyrannised over
 ' by one Man? Or is it fit that one man should have
 ' it in his power to make all the rest miserable?
 ' However, in a just way of reasoning, these questi-
 ' ons are impertinent to the cause, yet they may be
 ' answered by other interrogatories. As, can it be
 ' believed, that a people ever were willing, or con-

' sented, that thieves, malefactors, and cheats, every
 ' where grassant, should have liberty to ravage and
 ' destroy at their pleasure? And will not a people
 ' choose rather to be subject, to one man's pleasure,
 ' upon a fair understanding, who is potent, and can
 ' protect him, than be left at large to fight it out
 ' continually, in clans and combinations, to gain a
 ' little defence and safety? They must answer if
 ' any thing, right; but then, say they, you may
 ' change, and have a better government. Change,
 ' 'tis true, but seldom comes a better. If they say
 ' it is better the government be weak and precari-
 ' ous, because, for fear of themselves, they will do
 ' no injury; no, nor yet (for fear of themselves)
 ' hinder others from doing injury, which is worst
 ' of all; and who lives that hath not had experi-
 ' ence of this? But not to spin finer, let it be only
 ' observed that the force of the argument, of the
 ' resisters, lies in magnifying the evils of ill go-
 ' vernment; and they will have those taken in ut-
 ' most extremity, though but naturally possible,
 ' and in no sort probable, if ever known to have
 ' happened in the world. But they say nothing of
 ' the evils that attend want of power in a govern-
 ' ment, which make a sharper catalogue by much
 ' than the other; and they are such as never fail
 ' to happen, and, which is worse, affect the whole
 ' people wherever they do happen; as all must know
 ' by experience, when the nerves of government
 ' have been relaxed. No political state is perfect,
 ' and the least evil is the best. Publick good, so
 ' much in these men's mouths, is a cloke which hy-
 ' pocrites always wear, and if you turn it up a little,
 ' the *naasty self-interest, injustice, and oppression* will
 ' appear, that lies lurking under it. Those, who
 ' have been more than *once* burnt, which they say
 ' is the case of the *English* nation, will (it is to be
 ' hoped) watch well such fuel. The hardest case of
 ' the

the justest government is, that they are forced to deceive, to make people happy, that is to be quiet, or to take what is good for them. Give me the private man that honest dares be, and the government that justice dares do. Men that live in peace and safety, which are the ordinary fruits of government, are like men that live in health; then they are not contented, but long for preferment, honour, luxury, and pleasure: but when they fall under diseases, and are in pain, then they would quit all for pure health and ease.

It is not alien to these speculations, to put in a word in behalf of the *English* monarchy and government, which hath many advantages to the people, but none more glorious than this; *That all acts of the crown, against law, are mere nullities; and all that act under them are obnoxious to the law, and so far from being protected, that they may be questioned and punished by that very power, against whom its own command is no defence or justification.* And, for this cause, all authentick commands are put in writing, or sealed, or no person, served with such command, can be prosecuted for contempt in not obeying. For the party may know, by that, if it be a legal command, that requires active obedience, or not; and by whose fault it is sent forth, whereby the proper officer may be brought to answer the delict. This constitution never was heard of in any state but the *English*, nor is it extant in force under any government upon earth: so little danger is there of excesses from the *English* monarchy. But if I were put by from this patriarchal privilege, and had a lot in times of disorder, and were put upon a choice of the two, I would certainly upon the competition, rather yield to one absolute potentate, *tale quale*, but having power sufficient to govern

' and protect, than to live in perpetual fear and
 ' proper guard against injury and oppression from
 ' the most cruel of all sorts, that is, (not superiors
 ' so much as) equals, or rather inferiors. It is an
 ' observation, which the general experience of ages
 ' may vouch, *viz.* That the calamities which have
 ' fallen upon the people of *England* from the state
 ' of the government, have been incomparably more
 ' by reason of too little, than of too much, power
 ' exercised by the Kings; and that by how much
 ' nearer the state hath warped towards what some
 ' call a Common-wealth, by so much hath tyranny
 ' got ground, and the true liberty of the people
 ' sunk down; whereof great part never emerged to
 ' them, no not after the former government hath
 ' been happily restored.'

' But, to conclude with doing right to the cause;
 ' I must needs say, that it is not a just balance of in-
 ' terest that always regulates the good or evil con-
 ' sequences of power; but the mere shew, name,
 ' opinion and prejudice, or rather humour of the
 ' people go a great way in it. For it may be ob-
 ' served, that it is not enough to do men good,
 ' but they must think and accept of it as such, and
 ' also trust their government; or else, whatever
 ' the truth is, they will not flourish in numbers and
 ' increase of trade and wealth. Therefore it was a
 ' most wicked practice of the faction, to labour, as
 ' they did, to create misunderstandings and distrust
 ' in the people of their government; which must
 ' needs tend to the destruction of their welfare and en-
 ' crease. Now, to consider rightly the case, and
 ' make a judgment from the extremes, it is almost
 ' impossible prosperity, by encrease of people and
 ' wealth, should happen under the great *Asiatic*
 ' monarchies (although now, as the world transcends
 ' in wickedness, there can be no other than absolute
 ' government

government there) for the people cannot have
 reason to think themselves safe and secure in the
 advances they make, and, being careless of that,
 are ambitious of nothing but power to tyrannise
 over others, as they themselves are tyrannised over
 by their superiors; they think of no prosperity
 but through oppression; and so, by common con-
 sent, all are slaves. And this wolfish humour is
 such, that the government thinks their security lies
 in the destruction and depopulation of Provinces.
 And, to say truth, all defection of common ho-
 nesty and truth, which should tie people reasona-
 bly together, not only tends to, but makes abso-
 lute government necessary. Hence, from the very
 name of monarchy, men derive a prejudice, as
 if no security for life or estate were had under it;
 where it may be made appear that, in monarchic
 countries, which have laws of government, as
 well as of property, such as we call mixt, there
 is more real security than is to be found elsewhere,
 although there may be much more pretension to
 it. To instance in the pretended republics of *Ve-*
nice and *Holland*; the former is a pestilent Aristo-
 cracy of the worst sort, that is of a multitude,
 under which the *Citta dinazza*, that is the com-
 munity of the people, have no law or justice on
 their side, but as they gain the protection of one
 great man against another: and the other is *Hol-*
land, which hath no popular elections (essential to
 a Republic) but Burgomasters fill vacancies by a
 majority of themselves; and so a faction is always
 prevalent, both in the towns, of which the com-
 bination consists, and in the Stadthouse, whereby
 the lands of the countries all about are made di-
 rect slavish, and sometimes taxed so as not to be
 worth owning; and all to save the citizens purses;
 and all preferments and succession run in a
match-making channel and *family-relation*; and yet
 the

* the name of republicks holds these in credit, and
 * the people are pleased, encrease and thrive. But
 * whatever becomes of the humour and fancies of
 * people it is certain, for the utility of Government,
 * when sedition is not permitted to grow too much
 * upon it, that of *England* is a NONPAREIL.

Our Author goes on, ' I hope (says he) this digression upon the subject of the *English* government, and the law of *non-resistance*, may be indulged, as well for the relation it hath to the temper of those times*, whereof the history is the subject of the present examination, as also by reason of the false colours the author † before us has put upon it. He plainly accuseth the best men of the age of the worst of immoralities, and particularly of betraying the laws of their country to unbounded prerogative; and represents the doctrine, as well as law, of *non-resistance*, like a dreg of traitorism and slavery; though [*like the Dutchess of Marlborough*] he is not pleased to account for the signification of the words he so much harps upon. Why could not he have honestly shewn what it was those worthy men, he is pleased to revile, meant by the terms in which they delivered their sense, and what that sense was? No, that had justified, or rather done honour to the Loyal Church-party, especially of the clergy which was none of his business, but the contrary. His work was, as he brazenly expresseth it, to deliver them up to posterity in a dress as being illiterate, debauchees, false and detestable traitors to their country, the laws, and religion of it. That is the mark he aims at, and levels his piece most artificially: first commends his partisans for all good qualities,

* Reign of *Charles II.*

† Dr. *White Kennet* late Bishop of *Peterborough*.

‘ ties, then lets fly the contrary upon all the rest,
 ‘ by the description of *other* clergymen. To en-
 ‘ counter this slander, as to principles, I thought
 ‘ it needful to state them with such allegations, as
 ‘ some of them insisted on; though I pretend not
 ‘ to have half drawn forth the subject; but the
 ‘ rest is to be found in their excellent books and
 ‘ sermons in print §.’

So far our *honourable* author, the great Mr. NORTH; who, in his EXAMEN, from which we have taken the liberty to borrow this extract, has everlastingly obliged his Country with the only authentick and well-vouched history of the reign of King CHARLES II. and who perhaps too was the person best qualified of any one in his time, to unravel that almost impenetrable mystery of iniquity, the *Hellish plotting* in that Reign. He was a careful accurate and sagacious observer of men and things; saw with his own eyes, and heard with his own ears; examined, weighed, and compared; never satisfied till he had traced things to their first sources, and discovered the very first springs of action. To his own unwearied application, incomparable judgment and virgin integrity, (not to mention the advantages his rank, profession, and uncommon learning afforded him for this undertaking) must be added the great treasure of invaluable materials, he must necessarily be presumed to have acquired by means of the unreserved intimacy and entire confidence of his brother the great Lord-keeper NORTH, than whom no man, in the several high and eminent stations, he served the state, ever discharged his trust with more honour to himself, or to the more thorough contentment of his King and Country.

The above explanation of the *Gibberish* mentioned in her Grace's late ACCOUNT *, &c. which (as
 by

§ As the harmony between *Law* and *Divinity*, and many others.

* P. 136.

by her ridiculous *Cant Term*) one would imagine her totally ignorant of, we here earnestly recommend to her Grace's serious and attentive perusal: then let her Grace speak; and say, whether in her whole life (in the same number of pages, nay, or in ten times the number, HOLY writ excepted) she ever met with so much noble manly sense and true wisdom. We have here no idle precarious hypothesis, no fabulous *Utopian* systems, no wild-goose-chase after an imaginary state of nature, but the safe and well-grounded conclusions of experience and consummate knowledge in the NATURE, EXTENT, and LIMITS of our happy CONSTITUTION.

F I N I S.